

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STEPHANIE BOWENS, et al.,)	
)	
Plaintiff,)	
)	Case No. 06 C 4915
v.)	
)	Judge Joan B. Gottschall
GOVERNOR ROD BLAGOJEVICH,)	
)	
Defendant.)	

ORDER

Before the court is Defendant Governor Blagojevich’s (“Governor Blagojevich’s”) motion for certification of interlocutory appeal of the court’s March 11, 2008 memorandum opinion and order pursuant to 28 U.S.C. § 1292(b). For the reasons stated below, the court grants Governor Blagojevich’s motion, and certifies the following question to the Seventh Circuit Court of Appeals:

Whether Ill. Const. art. V, sec. 12, and 730 Ill. Comp. Stat 5/3-3-13(d) creates a liberty interest on behalf of applicants for executive clemency to have the governor rule on clemency petitions within a reasonable period of time after a recommendation has been sent to the governor by the Prisoner Review Board.

I. BACKGROUND

This case involves individuals who have sought executive clemency, and whose applications are awaiting a decision by Governor Blagojevich. Plaintiffs sought injunctive relief ordering Governor Blagojevich to rule on their applications (but not specifying *how* Governor Blagojevich ought to rule).¹ Governor Blagojevich filed a motion to dismiss, which the court

¹ Additional plaintiffs filed clemency petitions which were denied; these plaintiffs sought injunctive relief to compel Governor Blagojevich to disclose the reasons for, and process

denied on March 11, 2008. On April 23, 2008, Governor Blagojevich filed a motion seeking certification to appeal pursuant to 28 U.S.C. § 1292(b).² In the same motion, Governor Blagojevich is seeking a stay of proceedings while appeal is sought and, if granted, while appeal is pending in the Seventh Circuit.

II. ANALYSIS

Section 1292(b) states as follows:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C. § 1292(b). This court therefore has discretion to certify a question for appeal if four factors are present: “there must be a question of law, it must be controlling, it must be contestable, and its resolution must promise to speed up the litigation.” *Ahrenholz v. Bd. of Trustees of Univ. of Ill.*, 219 F.3d 674, 675 (7th Cir. 2000). If the court certifies a question, the Court of Appeals will decide for itself whether or not to consider the appeal upon application of the movant. § 1292(b).

employed in, the decision to deny their petitions for clemency. This count was dismissed on March 11, 2008.

² Governor Blagojevich did not notice this motion as required by local rule and this court’s standing order. It also appears that a courtesy copy of this motion was not delivered to the court. The court did not become aware of the motion until plaintiffs filed a motion for leave to proceed on October 23, 2008.

The March 11, 2008 opinion did involve a question of law which is controlling. The court ruled that plaintiffs had a liberty interest in having Governor Blagojevich resolve their clemency petitions within a reasonable period of time after a recommendation had been received from the Prisoner Review Board. This ruling is a question of law, not fact, and it is controlling in this case, for if the court had found to the contrary then it would have dismissed the only remaining count in this case.

The court concludes that this matter is “contestable.” It involves a “difficult central question of law which is not settled by controlling authority,” and there is substantial ground for difference of opinion. *See In re Brand Name Prescription Drugs Antitrust Litigation*, 878 F. Supp. 1078, 1081 (N.D. Ill. 1995). The court agrees with Governor Blagojevich that there is no controlling authority on this issue. The court also acknowledges that Governor Blagojevich has presented reasonable arguments in opposition to this court’s decision. Although the court disagrees with these arguments, it finds that this issue is contestable.

Finally, the court agrees with Governor Blagojevich that resolution of this question of law may expedite the case. Thorny issues of discovery into executive materials are on the horizon, which will be substantially affected by any decision of the Court of Appeals.

III. CONCLUSION

The court certifies the aforementioned question to the Court of Appeals. The court grants Governor Blagojevich’s motion to stay discovery until the latter of either: (1) eleven days from this order if Governor Blagojevich does not apply to the Court of Appeals to hear this certified appeal; or (2) the date upon which the certified appeal to the Court of Appeals is resolved.

